

CIVIL COVER SHEET

ORIGINAL

JS-44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

DEFENDANTS

AT&T SERVICES, INC.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

David A. Rosenfeld
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Attorneys (If Known)

EDL

E-filing

ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations Reporting & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Petition to Compel Arbitration

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
 UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE
 April 28, 2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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District 9

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDL

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner,

v.

AT&T SERVICES, INC.

Respondent.

CV No. 08

2211

PETITION TO COMPEL
ARBITRATION

Petitioner respectfully submits:

1. Jurisdiction of this Court is based upon 29 U.S.C. § 185, 9 U.S.C. § 4 and 28 U.S.C. § 1337. This is a Petition to Compel Arbitration of a grievance arising under the terms of a Collective Bargaining Agreement between the parties.

2. Petitioner is a labor organization within the meaning of 29 U.S.C. § 152 representing members employed by and performing work for Respondent in the terms and conditions of their employment. Petitioner does business within this judicial district maintaining offices and providing services in San Rafael, Marin County, and other sites in the Bay Area. Petitioner maintains its principal office in Sacramento, California.

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1 3. Petitioner is the umbrella organization of various locals of the Communication
2 Workers of America ("CWA") in California, including CWA Local 9404. All grievances up to
3 arbitration are handled by the local Unions, all matters requiring arbitration are handled by
4 Petitioner.

5 4. Respondent AT&T Services, Inc. is an employer whose principal place of business
6 is in San Ramon, Contra Costa County, California. Respondent is the successor to SBC and its
7 subsidiary companies in California and Nevada and is engaged in industry affecting commerce
8 within the meaning of 29 U.S.C. § 185.

9 5. A Collective Bargaining Agreement ("CBA") between Petitioner and SBC exists for
10 the period April 4, 2004 though April 4, 2009. As successor to SBC, Respondent is bound to the
11 terms and conditions set forth in the CBA. The CBA provides for grievance and arbitration
12 procedures in Article 7, § 7.05, *et seq.*, a true and correct copy of which is attached as Exhibit 1.

13 6. In or about July 2007, a grievance arose between CWA Local 9404 and
14 Respondent, known as the SBC/att 07-404-035, Kim Gravette, Subcontracting of Cable Work
15 grievance ("Subcontracting Grievance"). Local 9404 attempted to process and did process the
16 grievance through the grievance procedure set forth in Article 7, § 7.05 of the CBA. Respondent
17 refused to participate in the grievance procedure claiming that the subcontracting of cable work
18 was a single action for the Northern California region and that it was not obligated to hear multiple
19 grievances on a single action and would not hear the Subcontracting Grievance filed by Local 9404
20 because another CWA Local in San Jose filed a similar grievance.

21 7. Despite Respondent's refusal to participate in the grievance process, on or about
22 October 23, 2007, Petitioner notified Respondent of its intent to arbitrate the Subcontracting
23 Grievance.

24 8. On or about November 9, 2007, and again on December 12, 2007, Respondent
25 notified Petitioner that the Subcontracting Grievance would not be added to the arbitration list and
26 reiterated its position that it was not obligated to hear multiple grievances on a single issue.
27 Respondent further advised Petitioner that because it made an announcement regarding the
28 company's intent to subcontract cable locating work in December 2006, Local 9404's

1 Subcontracting Grievance was untimely.


2 9. The above disputes are plainly arbitrable under the CBA. Issues of the timeliness
3 of Local 9404's Subcontracting Grievance and whether Respondent is required to hear that
4 grievance are procedural issues that must be resolved by an arbitrator. *John Wiley & Sons, Inc. v.*
5 *Livingston*, 376 U.S. 543 (1964); *International Union of Operating Engineers, Local 150, AFL-*
6 *CIO*, 406 U.S. 487 (1982).

7 10. The failure and refusal of Respondent to arbitrate the Subcontracting Grievance
8 filed by Local 9404 is a clear violation of its statutory duty to arbitrate. Respondent's refusal to
9 arbitrate is without any justification and is disruptive to labor relations. As such, Respondent has
10 acted in bad faith, and an award of attorneys' fees is appropriate if not compelled. *United Food &*
11 *Commercial Workers Union v. Alpha Beta Co.*, 736 F.2d 1371, 1383 (9th Cir. 1983); *International*
12 *Union of Petroleum and Industrial Workers v. Western Industrial Maintenance, Inc.*, 707 F.2d 425
13 (9th Cir. 1983).

14 WHEREFORE the Petitioner prays that this Court issue an order compelling the
15 Respondent AT&T to arbitrate the dispute known as the SBC/att 07-404-035, Kim Gravette,
16 Subcontracting of Cable Work grievance. Petitioner furthermore requests the Court award
17 attorneys' fees and costs for the refusal of AT&T to arbitrate this grievance. Petitioner further
18 prays for such other relief as is deemed just and proper.

19 Dated: April 28, 2008

20 WEINBERG, ROGER & ROSENFELD
21 A Professional Corporation

22 By: 
23 DAVID A. ROSENFELD
24 ROBERTA D. PERKINS
25 Attorneys for Petitioner

26 118653/490549

2004 CONTRACT



**Communications
Workers of America**



**Pacific Telesis Group
Pacific Bell
Nevada Bell**

Advanced Solutions, Inc.
Pacific Bell Home Entertainment
Pacific Bell Information Services – MNG
SBC Services, Inc.
SBC Telecom, Inc. in Las Vegas
SBC Telecom, Inc. – Network Operations



Effective April 4, 2004
Expiration Date April 4, 2009

Subsequently, where agreement is reached, communication to the employees will be conducted jointly by the manager and the Union representative. In all cases, communication to the affected employees will not occur prior to a discussion with the appropriate Union representative.

B. When an employee is trending toward disciplinary action for job performance, for example attendance, quality, quantity, etc., management will normally involve the Union and solicit its input and assistance. The manager and the Union representative will work jointly to identify and eliminate the cause of the employee's problem to prevent it from recurring.

C. When a Union representative identifies an issue or dispute in the work area, he or she will interact with the appropriate manager in the work area. An effort should be made by both parties to resolve the problem.

Section 7.04 UNION PRESENTATION

The grievance procedure is designed to provide a timely, energy effective way of insuring equality and fairness in resolving disputes which have not been resolved through informal efforts. The Companies and the Union agree that it is their objective to resolve all grievances at the lowest level. The presentation of a grievance must be made in writing as described in Section 7.05C1a and in accordance with the time limitations specified below to be eligible for handling under the provisions of Sections 7.05 and 7.09:

- A. Grievances concerning the impact of new, changed or deleted methods and/or procedures intended for department-wide application must be presented within sixty (60) calendar days of the date of the Companies' notification to the Union of their intent to take such action or, within thirty (30) calendar days from the occurrence that an employee is affected by the change, whichever date is later.
- B. All other grievances must be presented within thirty (30) calendar days from the first occurrence of the action or within thirty (30) calendar days from the date of discovery.

Section 7.05 GRIEVANCE PROCEDURE

In keeping with the Companies' and the Union's objective to resolve all grievances at the lowest level, an employee may present his or her

grievance to a Union representative who will process it according to the following:

- A. A grievance involving the dismissal of any Regular or Term employee or a grievance involving disciplinary action other than dismissal of any employee will be presented as follows:

1. Step I - To the employee's immediate supervisor or, if appropriate, the manager who took the action. Two (2) paid Union representatives designated by the Local may attend this meeting. If the grievance is not resolved, it will be referred to:

2. Step II - District Level Manager (or equivalent title/skip level organizations). Three (3) paid Union representatives designated by the Local may attend this meeting to attempt to resolve the grievance. Only grievances involving the dismissal of a Regular or Term employee, which are not resolved, will be referred to Step III.

NOTE: The Step II meeting regarding any grievance may be omitted by mutual agreement.

3. Step III - (Dismissal grievances only) Department AVP (or equivalent title/skip level organizations) and Local President or either of their designated representatives. Two (2) paid Union representatives designated by the Local may attend this meeting to attempt to resolve the grievance.

NOTE: If the Step II meeting regarding the dismissal of a Regular or Term employee has been omitted, a maximum of three (3) paid Union representatives designated by the Local may attend the Step III meeting.

- A grievance involving matters other than discipline will be presented as follows:

1. Step I - To the manager who approved the action. Two (2) paid Union representatives designated by the Local may attend this meeting. If the grievance is not resolved, it will be referred to:
2. Step II - The next level of management above the manager who heard the grievance at Step I (no lower than District Level or higher than Department Vice President or equivalent title/skip level organizations) and Local President or either of their designated representatives. Three (3) paid Union representatives

designated by the Local may attend this meeting to attempt to resolve the grievance.

C. Step I Grievances will be processed according to the following method:

1. Prior to the Step I Meeting
 - a. The Union's written presentation of the grievance to management will include the nature of the grievance; the date of the occurrence; the contractual article/section alleged to have been violated, if applicable, or if not applicable, the source of the alleged violation (e.g., MOA name or number, discipline, documentation); the name of the grievant; and the remedy sought. Presentation must be made in accordance with the time limits stated in Section 7.04.
 - b. Management will provide the Union with any information and/or reasons used as a basis for the grievance action no later than ten (10) calendar days following presentation of the grievance. This requirement to share information and/or reasons for the grievance action applies whether or not a Step I meeting is held.
 2. Holding the Step I Meeting
 - a. Management will hold the meeting within fifteen (15) calendar days following presentation of a grievance.
 - b. Both parties should make every effort to ensure that a Step I meeting is held. However, in those circumstances where a Step I meeting is not held within fifteen (15) calendar days, as stated in Section 7.05C2a and no mutual agreement to extend the time limit is reached, or where there is mutual agreement to omit the Step I meeting, the grievance shall be considered denied by management and will then be escalated to Step II of the Grievance Procedure.
- NOTE: If the Step I meeting is not held, management is required to provide the information specified in Section 7.05C1b.
3. Following the Step I Meeting
 - a. Management will inform the Union of the Company's position and rationale at the conclusion of the Step I meeting.

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D. Step II grievances will be processed according to the following method:

1. Prior to the Step II Meeting
 - a. The Union will notify the Company in writing of its intent to escalate the grievance to Step II within thirty (30) calendar days following the Step I meeting, or the date when the Step I meeting should have been held as stated in Section 7.05C2a.
 - b. The Union's failure to notify the Company, of its intent to escalate the grievance, within the time limit stated in Section 7.05D1a, will result in the grievance being considered withdrawn from the Grievance Procedure.
 2. Holding the Step II Meeting
 - a. Management will hold the Step II grievance meeting within thirty (30) calendar days of receipt of the Union's written intent to escalate the grievance.
 - b. Failure to hold the Step II meeting within the time limit stated in Section 7.05D2a, or when no mutual agreement to extend the date has been reached, will result in the grievance being deemed as settled in favor of the Union. However, the settlement cannot exceed what an arbitrator would have awarded under Sections 7.12 and 7.14.
 3. Following the Step II Meeting
 - a. Management will send the Step II Company position to the Union and the appropriate Labor Relations Director, in accordance with Section 7.07, at the final disposition of the Step II meeting for grievances involving issues other than dismissal.
 - b. Management will inform the Union of the Company's position and rationale at the conclusion of all Step II meetings involving dismissal grievances.
- E. Step III grievances (DISMISSAL GRIEVANCES ONLY) will be processed according to the following method:
1. Prior to the Step III Meeting

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- a. The Union will notify the Company in writing of its intent to escalate the grievance to Step III within thirty (30) calendar days following the final disposition of the Step II meeting or the date it was mutually agreed to omit the Step II meeting.
 - b. The Union's failure to notify the Company of its intent to escalate the grievance, within the time limits stated in Section 7.05E1a, will result in the grievance being considered withdrawn from the Grievance Procedure.
2. Holding the Step III Meeting
 - a. Management will hold the Step III grievance meeting within thirty (30) calendar days of receipt of the Union's written intent to escalate the grievance.
 - b. Failure to hold the Step III meeting within the time limit stated in Section 7.05E2a or when no mutual agreement to extend the date has been reached, will result in the grievance being deemed as settled in favor of the Union. However, the settlement cannot exceed what an arbitrator would have awarded under Sections 7.12 and 7.14.
 3. Following the Step III Meeting
Management will send the Step III Company position to the Union and the appropriate Labor Relations Director in accordance with Section 7.07.
 - F. Pending final settlement of the grievance, the Companies shall not thereafter deal directly with the employee concerning said grievance without Union concurrence, but shall deal directly with the Union representative.
- Section 7.06 SHARING INFORMATION**
- A. During the Step I meeting, the Companies and the Union will identify appropriate areas of concern. During Step I and Step II meetings, the Companies and the Union will share facts deemed relevant to the grievance by either party.
 - B. Disputes over relevancy of information and photocopies will be resolved as follows:

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1. The request should be presented in writing to the manager. If the dispute is not resolved at this level within seven (7) calendar days, it shall be referred to:
2. The Local Union Officer and District Manager level. If not resolved at this level within seven (7) calendar days, it shall be referred to:
3. The National Union Representative and Labor Relations Director level. If not resolved at this level within seven (7) calendar days, the Union may elect to:
4. Arbitrate the issue under the provision of Section 7.10.
- C. The Companies reserve the right to charge the Union for the cost of the photocopies including the wages of the operator of the copying equipment in the event the volume of requests become substantial.

Section 7.07 COMPANY POSITION

The Step II or Step III Company position (as described in 7.05D3 and 7.05E3) shall be sent by certified mail to the National and Local Union in writing within five (5) calendar days of the final Step II or Step III grievance meeting. A copy will also be sent to the appropriate Labor Relations Director.

Section 7.08 UNRESOLVED UNION PRESENTED GRIEVANCES

Any grievance not resolved under Subsections 7.05A and 7.05B may be taken to arbitration under the provisions of Sections 7.10 or 7.15.

Section 7.09 EMPLOYEE PRESENTATION

- A. An employee may present his or her grievance to the employee's immediate supervisor within thirty (30) calendar days from the first occurrence, and to other successive levels of management up to and including the Department Manager (or authorized representative) as may be required to resolve the grievance without Union intervention.
- B. The resolution of an employee grievance may not be inconsistent with the terms of this Contract. A Union representative will be given an opportunity to be present at the resolution of any employee grievance concerning the interpretation or application of the terms of this Contract.

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